

PART 49

TERMINATION OF CONTRACTS

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SUBPART 49.1 - GENERAL PRINCIPLES

49.101 Authorities and responsibilities.

(b) Notwithstanding a change in requirements, a contract is not to be terminated for convenience (except at no cost to the Government as provided in FAR 49.402 -4(c)) if the contractor is in unexcusable default and the Government has a legal right to terminate such contract for default.

(c) The undelivered balance of \$5000 is to be used as a guideline by the contracting officer when other cost evaluation measures are not available. When Termination Decision Model (TDM) data indicate that a termination (whole or partial) would be cost effective, such information shall be considered, along with other relevant information, in making a sound termination decision by the contracting officer. Accordingly, unless termination is clearly not in the Government's best interest, all contract due-ins with positive potential savings shall be considered for cancellation/reduction regardless of the dollar value when workload permits.

SUBPART 49.4 - TERMINATION FOR DEFAULT

49.402 Termination of fixed price contracts for default.

49.402-3 Procedure for default.

(90) Procedure for default of delivery orders against Federal Supply Schedule contracts. Ordering offices shall furnish to the GSA Contracting Center responsible for the particular commodity the details concerning all material instances of unsatisfactory performance by the contractor, whether or not properly adjusted and settled. Ordering offices also shall report, as may be directed by the Federal Supply Service (FSS), all purchases made against the account of a contractor placed in default by that Service.

49.402-6 Repurchase against contractor's account.

(b) The defaulted contractor shall not be solicited for the repurchase and award shall not be made to the defaulted contractor when the authority for the repurchase is the Default clause, unless the contracting officer determines that there are overriding concerns in the public interest which dictate solicitation of, or award to, the defaulted contractor of the repurchase quantity. When the defaulted contractor submits the low, acceptable offer at a price not higher than the defaulted contract price, the contracting officer shall make a public interest determination if the defaulted contractor is determined to be responsible on the repurchase action. Public interest determinations shall state the contracting officer's reasons for solicitation of, or award to, the defaulted contractor for the repurchase quantity. In such cases, the contracting officer must determine that the defaulted contractor has taken corrective action and is responsible. Authority for approval of all such public interest determinations is delegated, without redelegation authority to the chief of the contracting office at the DSCs (the Executive Director for Procurement at DSCR may further delegate to the Deputy Executive Director for Procurement and the Chief, Base Support Division without power of redelegation) and to:

- (1) Commanders of DCMDs and Commander, DCMCI.
- (2) Commander, Defense Distribution Region East.
- (3) Commander, Defense Distribution Region West.
- (4) Commander, Defense Reutilization and Marketing Service.
- (5) **Administrator, Defense Automated Printing and Support Center .**
- (6) Administrator, Defense National Stockpile Center.
- (7) Commander, Television-Audio Support Activity.

In the event that the low offeror is the defaulted small business or another small business and the contracting officer cannot find that small business responsible, the matter shall be referred to DLA, Executive Director, Procurement **Management**, prior to any referral to SBA for a Certificate of Competency.

(90) Consideration of administrative costs of reprocurement after termination for default. Contracting officers may insert a clause substantially the same as at 52.249 -9000, Administrative costs of reprocurement after termination for default, in solicitations and contracts. Inclusion of this clause will place contractors on notice that, subsequent to reprocurement after termination for default, the Government reserves the right to assess specific administrative costs and make written demand for these costs in addition to other costs as addressed in FAR 49.402-6(c) and FAR 49.402-7(b).